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GERRY RAMSEY and CAROLE RAMSEY

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA**

GERRY RAMSEY and CAROLE
RAMSEY,

Plaintiffs,

vs.

RITE AID CORPORATION, and DOES 1
to 20, inclusive,

Defendants.

Case No. C 05-02167

**(PROPOSED) ORDER GRANTING
LEAVE TO FILE FIRST AMENDED
COMPLAINT AND REMANDING
ACTION TO MARIN COUNTY
SUPERIOR COURT**

Date: September 9, 2005

Time: 9:00 a.m.

Courtroom: 7, 19th Floor

Judge: Honorable Maxine M. Chesney

Before the Court is

~~On September 9, 2005, this matter came regularly before the Court for hearing of~~
plaintiffs' motion for order granting leave to file first amended complaint and remanding
this action to the Marin County Superior Court. ~~Robert F. Epstein, Esq. appeared on~~
~~behalf of plaintiffs. Annemarie M. Liermann, Esq. appeared on behalf of defendant~~
~~RITE AID CORPORATION.~~

The Court hereby makes the following findings and order:

1 WHEREAS, plaintiffs GERRY RAMSEY and CAROLE RAMSEY filed this action
2 in the Superior Court of the State of California, County of Marin, on April 5, 2005;

3 WHEREAS, this is a personal injury action arising from a negligently filled
4 pharmacy prescription;

5 WHEREAS, plaintiffs' original complaint contained specific allegations against
6 "Doe 1", the pharmacist who filled the prescription in question;

7 WHEREAS, defendant RITE AID CORPORATION ("Rite Aid") served notice of
8 removal of this action on May 26, 2005;

9 WHEREAS, on July 19, 2005, Rite Aid notified plaintiffs of the identity (JAMES
10 FOSTER STRENKOFISKY) and residence (Marin County, California) of the pharmacist
11 whom plaintiffs had sued as "Doe 1"; and


12 WHEREAS, amendment of the complaint to substitute Mr. Strenkofsky in place of
13 the previously fictitiously named defendant Doe 1 and remand of this action to the Marin
14 County Superior Court is supported by the law, policy, and factors set forth in Federal
15 Rule of Civil Procedure 15(a), Title 28 United States Code section 1447(e), ~~and Righetti~~
16 v. Shell Oil Co. (N.D. Cal. 1989) 711 F.Supp. 531, and Newcombe v. Adolf Coors Co., 157 F.3d
17 686, 691 (9th Cir. 1998).

18 NOW, THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED:

19 1. ^{the Clerk of this Court shall file the}
~~That plaintiffs may file their~~ First Amended Complaint, a copy of which is
attached hereto; and

20 2. After the First Amended Complaint is filed by the Clerk of this Court, that
21 this action be REMANDED to the Superior Court of the State of California, County of
22 Marin.

23 DATED: August 19, 2005

24 
25 Honorable Maxine M. Chesney
26 Judge of the United States District Court
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